

Serial No. 10/656,841  
60,130-1721  
03MRA0169

### REMARKS

Applicant wishes to thank the Examiner for the detailed remarks, allowance of claim 15 and the allowability of claims 9, 12 and 14. Claims 1-22 are pending.

Submitted herewith is a Terminal Disclaimer in compliance with 37 CFR 1.321(c) to overcome the provisional obviousness-type double patenting rejection.

Claims 13, 16 and 19-22 were rejected under 35 U.S.C. §102(b) as being anticipated by *McGibbon et al.* Applicant respectfully traverses these rejections.

Claim 13 recites that the rearward leaf spring segment is longitudinally movable parallel to the vehicle mainframe. Initially, Applicant recites a rearward leaf spring segment. The Examiner is ignoring this limitation. The leaf spring of *McGibbon et al.* is mounted transverse to the vehicle. The rearward leaf spring segment of *McGibbon et al.* is therefore a longitudinal side (approximately where reference numeral 10 points in Figure 2). The rejection fails for this reason alone.

*McGibbon et al.* fails even to disclose a vehicle mainframe yet alone that the rearward leaf spring segment is longitudinally movable parallel to the vehicle mainframe. *McGibbon et al.* discloses only a cross member 12. *McGibbon et al.* recites that the "composite leaf spring 10 that is arranged transversely of the vehicle frame beneath a cross member 12 thereof and supports at each of its outboard ends the lower end of a front wheel knuckle 14." [See Col 2, lines 20-25, emphasis added] As the composite leaf spring 10 of *McGibbon et al.* is mounted transversely, the leaf spring simply cannot move parallel to the vehicle mainframe.

Applicant agrees claim 13 is relatively broad, however, the claim is not indefinite. Applicant has specifically recited rearward leaf spring segment along with longitudinally movable parallel to the vehicle mainframe. Such geometric relationships define the portion of the vehicle to which the spring segments moves relative to. That is, the term rearward relates to the vehicle mainframe which must be defined along the length of vehicles as specifically illustrated in Figure 1. The claim is properly allowable.

Claims 1-6 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Duchemin* in view of *McGibbon*. Applicant respectfully traverses these rejections as there is absolutely no

Serial No. 10/656,841  
60,130-1721  
03MRA0169

teaching, suggestion, or motivation to modify *Duchemin* in view of *McGibbon* as proposed. *Duchemin* discloses that the "leaf is preferably constructed without welding from a tube of constant section whose wall has a uniform thickness." [See Col. 2, lines 23-40] The *Duchemin* leaf is hollow in cross-section. [See Figures 3-5]. The Examiner admits that *Duchemin* makes no reference to composite materials. Such hollow cross-section is consistent with a metallic tubular member - the only construction disclosed by *Duchemin*. *Duchemin* makes no mention of a composite material whatsoever.

The entire purpose of *Duchemin* is the manufacture of a leaf spring from a tubular metallic member in which:

The leaf is preferably constructed without welding from a tube of constant section whose wall has a uniform thickness. This tube is then deformed in a die so as to have a section whose width and thickness vary along its length.  
[col. 2, lines 23-27]

*McGibbon*, however, discloses only a solid, completely linear leaf spring 10. There is no motivation to make the proposed combination as such manufacture is inapplicable to a composite material. It is improper to modify the base reference in such a way that it ruins the goal or function of the base reference. The Examiner's proposed modification would do so as a composite material cannot be "deformed in a die." In other words, the Examiner cannot properly just ignore the manufacturing method of the *Duchemin* leaf spring and the reasons for such manufacturing methods without destroying the underlying goal of *Duchemin* - that of providing a lightweight metallic leaf spring which is conducive to heat treatment. [See Col. 1, lines 23-25.] The only motivation to make the combination as proposed is by following the knowledge disclosed within the present invention. This is impermissible usage of hindsight in an attempt to recreate Applicants device. Accordingly, claims 1-6 are properly allowable.

Claims 7, 8, 10, 11, 13 and 16-22 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Duchemin* in view of *McGibbon* and further in view of *Davis*. Applicant respectfully traverses these rejections as there is absolutely no teaching, suggestion, or motivation to even modify *Duchemin* in view of *McGibbon* as discussed above. This failure to

Serial No. 10/656,841  
60,130-1721  
03MRA0169

provide a proper combination as discussed above defeats the rejection and all claims are allowable for this reason alone.

Also, *Davis* adds nothing to the proposed combination as *Davis* does not even disclose a composite material leaf spring. The Examiner relies upon *Davis* only to show a solid leaf spring as recited in page 4 of the office action; however, *McGibbon* alone discloses a solid leaf spring. The combination with *Davis* fails to correct the deficiencies of *Duchemin* in view of *McGibbon*.

Furthermore, the Examiner initially argues that the motivation for the combination of *Duchemin* in view of *McGibbon* is to provide lightweight (page 3) but then suggest the motivation is for strength (page 4). Such motivations are inherently contradictory and support Applicant's point that the Examiner is utilizing hindsight since the Examiner must rely upon different motivations for the same reference combination in different rejections. The claims are properly allowable.

Even if the combination were properly made, there are differences between the claimed invention and the teachings of the cited references so that the combination does not meet the limitations of Applicant's claims.

Claim 8 recites wherein said shear damper is mounted directly to said rearward leaf spring segment. The purported combination fails to disclose or suggest such a direct mounting.

Claim 21 recites said shear damper is mounted to an upper surface of said rearward leaf spring segment. The purported combination fails to disclose or suggest a shear damper which is mounted to an upper surface.

Claim 22 recites said shear damper is generally rectilinear in shape. The purported combination fails to disclose or suggest a rectilinear damper as the Examiner is interpreting the rubber bushing 24 of *McGibbon* as the shear damper. Furthermore, The Examiner argues that making the shear damper of rectilinear shape is an obvious matter of design choice. However, the Examiner supplies no evidence. Applicant cannot respond without the evidence, and thus asks that holding be dropped or evidence supplied. MPEP § 2144.03 states that "it would not be appropriate for the examiner to take official notice of facts without citing a prior art reference where the facts asserted to be well known are not capable of instant and unquestionable

Serial No. 10/656,841  
60,130-1721  
03MRA0169

demonstration as being well known." Therefore, as Applicant has adequately traversed the sufficiency of the Examiner's rejection under 35 U.S.C. § 103(a) in view of "obvious common knowledge," the Examiner must provide documentary evidence to support the Examiner's conclusions.

Applicant does not claim to have invented the concept of a composite leaf spring. Rather, Applicant has provided a unique composite leaf spring mounting arrangement. The claims are patentable.

The Commissioner is authorized to charge \$130 to Deposit Account No. 50-1482 in the name of Carlson Gaskey & Olds for the terminal disclaimer fee.

Applicant respectfully submits that this case is in condition for allowance. If the Examiner believes that a teleconference will facilitate moving this case forward to being issued, Applicant's representative can be contacted at the number indicated below.

Respectfully Submitted,

**CARLSON, GASKEY & OLDS, P.C.**



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